

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

UNITED STATES OF AMERICA,

Plaintiff,

v.

GLEN ARTHUR JACKSON,

Defendant.

Case No. 2:17-cr-00336-KJD-CWH

ORDER

Presently before the Court is Defendant's Motion for Reconsideration (#63). The Government filed a response in opposition (#66) to which Defendant replied (#67).

I. Background

The Court finds it unnecessary to give another detailed description of Defendant's criminal history which led to his current incarceration. He was adjudicated guilty and sentenced to a term of imprisonment of 108 months, followed by lifetime supervision on April 23, 2019. The Court considered Defendant's age and health, contributions to the community and family support when it departed below the low-end of the guideline range, 151 months. His projected release date is currently June 27, 2025.

On January 25, 2021, the Court denied (#62) Defendant's motion for compassionate release. The Court based its denial upon its finding that Defendant was still a danger to the community and that extraordinary and compelling reasons did not mandate the release of Defendant. However, on April 8, 2021, the Ninth Circuit Court of Appeals clarified that under the First Step Act, U.S.S.G. § 1B1.13 is not binding on the court, where a defendant brings an 18 U.S.C. § 3582(c)(1)(A) motion to directly to the Court, as Defendant has done here. See United States v. Aruda, 993 F.3d 797, 801-802 (9th Cir. 2021). Aruda, however, held that the factors set forth in § 1B1.13 may be considered by the Court to inform its exercise of discretion. Id. at 802.

1 Defendant now moves for reconsideration based on the Court's prior reliance on
2 § 1B1.13 and additional circumstances that have changed since the Court's original order.
3 Having both reviewed the prior order and the changed circumstances, the Court finds that
4 reconsideration under Aruda is not warranted. The Court acknowledges that the § 1B1.13 factors
5 are advisory rather than mandatory determinations. In other words, the Court no longer "must"
6 consider these factors, but they may inform the Court in its exercise of discretion. Here, the
7 Court finds that consideration of the factors still counsel against compassionate release.

8 II. Analysis

9 A. Extraordinary and Compelling Reasons

10 The Court has previously addressed the issues raised by Defendant regarding his risk
11 factors. The only risk factors acknowledged by the CDC that pertain to Defendant are his age
12 (71), obesity and hypertension. There is no doubt that these factors increase the likelihood of
13 hospitalization or death if Defendant were to contract Covid-19 ("Covid"). However, Defendant
14 has already contracted and recovered from Covid and now has natural antibodies to protect him
15 from reinfection.

16 Further, since his original motion, Defendant has now been vaccinated against Covid
17 which greatly reduces the risk of poor outcomes.¹ Though Defendant has needed a post-Covid,
18 Albuterol inhaler, such an outcome is not extraordinary. Defendant correctly argues that neither
19 vaccination nor his own natural antibodies "eliminate [his] risk for severe illness or death from
20 COVID-19." However, the Bureau of Prisons is not required to "eliminate" either risk of
21 infection or risk of hospitalization or death, because no one can entirely eliminate those risks.
22 After he filed his motion for reconsideration, Defendant was transferred from the Big Spring
23 facility to Terminal Island FCI. Currently, Terminal Island is reporting no inmate cases of Covid.

24 Therefore, the Court does not find extraordinary and compelling reasons warranting
25 compassionate release.

26
27
28 ¹ The Court also notes that since the filing of his motion for reconsideration, the FDA has approved a booster vaccination, particularly for those at high risk.

1 B. The 18 U.S.C. § 3553(a) Factors

2 The Court finds no reason to reconsider its prior decision that the section 3553 factors do
3 not counsel in favor of release. Defendant has still served less than forty percent (40%) of his
4 sentence. The Court already departed below the guidelines when it sentenced him. The Court
5 incorporates its prior decision finding him a danger to the community. Further, he cannot
6 complain that his incarceration was particularly severe due to the record setting 2021 winter
7 storm in Texas, because a majority of citizens in Texas suffered without water or heat. His
8 condition was not unique. Accordingly, the Court declines to reconsider its previous order that
9 neither extraordinary or compelling circumstances exist requiring his compassionate release nor
10 that the section 3553 factors counsel in favor of release.

11 III. Conclusion

12 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion for Reconsideration
13 (#63) is **DENIED**.

14 Dated this 18th day of November, 2021.

15
16 

17 Kent J. Dawson
18 United States District Judge
19
20
21
22
23
24
25
26
27
28